

Court of Appeals, Division One

Civil Appeal

1 CA-CV 15-0047

BRUMETT v. MGA HOME

Appellate Case Information

Case Filed: 29-Jan-2015

Case Closed: 12-Jan-2017

Decision

Dept/Composition

Department B

Hon. Samuel A Thumma

Hon. Margaret H Downie

Hon. Mark R Moran

Side 1. BILLY BRUMETT, et al., Plaintiff/Appellee

(Litigant Group) BILLY & ANGELA BRUMETT

- Billy Brumett
- Angela Brumett

Attorneys for: Plaintiff/Appellees

W Raymond Johnson, III, Esq. (AZ Bar No. 19838)

Robert M Gregory, Esq. (AZ Bar No. 21805)

Tyler M Sorensen, Esq. (AZ Bar No. 32092)

Side 2. MGA HOME HEALTHCARE, L.L.C., et al., Defendant/Appellant

(Litigant Group) MGA HOME HEALTHCARE LLC

- MGA Home Healthcare LLC
- Susan D Bosman, LPN

Attorneys for: Defendants/Appellants

James R Broening, Esq. (AZ Bar No. 4036)

T Scott King, Esq. (AZ Bar No. 11562)

Michelle L Donovan, Esq. (AZ Bar No. 27958)

Kevin R Myer, Esq. (AZ Bar No. 19919)

CASE STATUS

Jan 12, 2017....Case Closed

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2010-092697	Tort: Non-Motor Vehicle; Statutory Abuse & Neglect; Wrongful Death [see file]		David M Talamante, Authoring Judge of Order		

2 CASE DECISIONS

28-Jul-2016 OPINION

Samuel Thumma.....Author

Kent Cattani.....Concur

Randall Howe.....Concur

Filed: 28-Jul-2016

Mandate:

Decision Disposition

Appeal Reinstated

06-Dec-2016 MEMORANDUM DECISION

Margaret Downie.....Author

Samuel Thumma.....Concur

Mark Moran.....Concur

Filed: 06-Dec-2016

Mandate: 12-Jan-2017

Decision Disposition

**Vacated
Remanded**

88 PROCEEDING ENTRIES

- 29-Jan-2015 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 12/22/14
- 29-Jan-2015 FILED: e-Record on Appeal: Instruments/Minute Entries
- 6-Feb-2015 FILED: Notice to Parties re: Appellants' Fee/Case Management Statement/Brief Due
- 10-Feb-2015 FILED: Notice of Payment of Filing Fee; Certificate of Service re Notice of Payment of Filing Fee (Appellant)
- 11-Feb-2015 FILED: Case Management Statement (Appellant)

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6. 12-Feb-2015 RECEIPT No.: 2015-00193 ; \$280.00, Authorization: #42014140533, Applied to: MGA HOME HEALTHCARE LLC - Class A Filing Fee (\$280.00) Paid for: Broening Oberg Woods & Wilson PC - By Integrated Resource Systems
7. 19-Feb-2015 FILED: Appellee's Notice re: Appellee's Fee/Appellant's Brief Due
8. 17-Mar-2015 FILED: Notice of Paying Filing Fee; Certificate of Service (Appellee)
9. 20-Mar-2015 RECEIPT No.: 2015-00370 ; \$140.00, Authorization: #78014195810, Applied to: BILLY & ANGELA BRUMETT - Class B Filing Fee (\$140.00) Paid for: Johnson & Gregory PLLC - By Integrated Resource Systems IN
10. 30-Mar-2015 FILED: Request for Extension of Time for Opening Brief; Notice of Service Re Request for Extension of Time for Answering Brief (Appellant)
11. 31-Mar-2015 ORDERED: Request for Extension of Time for Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Tuesday, 04-07-2015 to Thursday, 05-07-2015 Melina Brill ProTem Judge - Author
12. 7-May-2015 FILED: Second Request for Extension of Time for Opening Brief; Second Request for Extension of Time for Opening Brief (Certificate of Service) (Appellant)
13. 11-May-2015 ORDERED: Second Request for Extension of Time for Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Thursday, 05-07-2015 to Monday, 05-18-2015. Melina Brill ProTem Judge - Author
14. 18-May-2015 FILED: Opening Brief; Certificate of Compliance; Certificate of Service (Appellant)
15. 26-May-2015 FILED: Plaintiffs Motion to Include Additional Transcripts Per A.R.C.P. 11.1(d)(4); Certificate of Service (Appellee)
16. 12-Jun-2015 FILED: Plaintiffs'/Appellees' Motion for Leave to Exceed Page Limit; Certificate of Service (Appellee)
17. 17-Jun-2015 FILED: Plaintiffs'/Appellees' Motion for Leave to Supplement the Court Record; Certificate of Service (Appellee)
18. 17-Jun-2015 FILED: Plaintiffs'/Appellees' Amended Motion for Leave to Supplement the Court Record; Certificate of Service (Appellee)
19. 17-Jun-2015 FILED: Response in Opposition to Appellees' Motion to Include Additional Transcripts Per A.R.C.P. 11.1(d)(4); Certificate of Service; exhibit - JPTS (Appellant)
20. 17-Jun-2015 FILED: Response in Opposition to Appellees' Motion for Leave to Expand Page Limits; Certificate of Service (Appellant)
21. 17-Jun-2015 FILED: Response in Opposition to Appellees' Amended Motion to Supplement Court Record with Deposition Testimony and Trial Transcripts; Certificate of Service; exhibit - JPTS (Appellant)
22. 24-Jun-2015 FILED: Motion to Suspend Briefing Schedule - ARCAP 6(B) - Request for Procedural Order; Certificate of Service (Appellee)
23. 26-Jun-2015 FILED: Plaintiffs/Appellees' Response Brief (Stricken per order filed on 8/27/15); Certificate of Compliance; Certificate of Service; Plaintiffs/Appellees' Response Brief Appendix (3)
24. 26-Jun-2015 FILED: Plaintiffs/Appellees' Response Brief Appendix; Plaintiffs/Appellees' Response Brief Appendix (2)
25. 29-Jun-2015 ORDERED: Motion to Suspend Briefing Schedule - ARCAP 6(B) - Request for Procedural Order (Appellee) = GRANTED/vacating 7/6/15 due date for answering brief. Order ruling on pending motions to supplement record will set due date for filing answering brief. Melina Brill ProTem Judge - Author
26. 8-Jul-2015 ORDERED: Plaintiffs'/Appellees' Motion for Leave to Exceed Page Limit (Appellee) = DENIED as unnecessary. FURTHER ORDERED: Plaintiffs Motion to Include Additional Transcripts Per A.R.C.P. 11.1(d)(4) (Appellee) = DENIED. FURTHER ORDERED: Plaintiffs'/Appellees' Motion for Leave to Supplement the Court Record (Appellee) = DENIED except as to opening statement and closing argument. Hon Patricia A Orozco - Author
27. 21-Jul-2015 FILED: Motion to Continue Suspension of Briefing (sic) Schedule Until Compliant Answering Brief is Approved by This Court; Certificate of Service (Cross-Appellant)
28. 22-Jul-2015 FILED: Plaintiffs'/Appellees' Response to Motion to Continue Suspension of Briefing Schedule until Compliant Answering Brief is Approved by this Court; Certificate of Service (Appellee)

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29. 22-Jul-2015 ORDERED: Granting the motion to continue suspension of the briefing schedule and vacating the deadline to file a Reply Brief. FURTHER ORDERED: Granting appellants to/including 8/3/15 to file a motion to strike portions of the Answering Brief. The order ruling on the motion to strike will set a due date for the filing of the Reply Brief. If Appellants do not timely file a motion to strike, the Reply Brief will be due 8/24/15. Barbara Vidal Vaught ProTem Judge - Author
30. 4-Aug-2015 FILED: Motion to Strike Portions of Answering Brief and Replace with Redacted Brief ; Certificate of Service (Appellant)
31. 4-Aug-2015 FILED: Motion to Strike Portions of Answering Brief and Replace with Redacted Brief; Certificate of Service; Strikethrough version (Plaintiffs/Appellees' Response Brief); Plaintiffs/Appellees' Response Brief (Appellant)
32. 4-Aug-2015 FILED: Response to Appellant's Motion to Strike; Certificate of Service (Appellee)
33. 12-Aug-2015 FILED: Notice of Filing Appellees' Amended Response Brief; Certificate of Service (Appellee)
34. 12-Aug-2015 FILED: Plaintiffs/Appellees' Amended Response Brief; Certificate of Compliance; Certificate of Service
35. 12-Aug-2015 FILED: Plaintiffs/Appellees' Amended Response Brief - Appendix
36. 24-Aug-2015 FILED: Reply to Motion to Strike Alternatively, Motion to Extend; Certificate of Service (Appellant)
37. 27-Aug-2015 ORDERED: Motion to Strike Portions of Answering Brief and Replace with Redacted Brief (Appellant) = DENIED as moot. FURTHER ORDERED: Accepting answering brief filed on 8/12/15 in place of answering brief filed on 6/26/15. FURTHER ORDERED: Reply brief shall be filed on/before 9/18/15. Melina Brill ProTem Judge - Author
38. 19-Sep-2015 FILED: Reply Brief; Certificate of Compliance; Certificate of Service
39. 30-Sep-2015 FILED: Request for Oral Argument; Certificate of Service (Appellant)
40. 30-Sep-2015 FILED: Plaintiffs'/Appellees' Response to Defendants/Appellants' Motion for Oral Argument; Certificate of Service (Appellee)
41. 6-Oct-2015 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
42. 13-Oct-2015 FILED: Reply to Objection to Request for Oral Argument; Certificate of Service (Appellant)
43. 15-Oct-2015 ORDERED: Request for Oral Argument (Appellant) = GRANTED. Hon Michael J Brown - Author
44. 16-Oct-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record
45. 16-Oct-2015 FILED: Additional Record on Appeal:
Exhibits: HD 2/8/12 - List and # 1 2 3 4 5 6 7 8 10 12 13 14 15 16 17 18 20 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 43 44 45 46 47 48 50 51 52 53 54 55 56 57 58 59 60 61 62 64 65 66 68 69 70 75 76 78 79 80 81 89 90 91 92 93 94 95 96 97 98 102 103 104 105 106 107 108 109 110 111 112 in manila envelope; HD 3/10/14 - Lost and 3 3 4 5 8 10 11 12 13 14 15 16 17 18 19 20 23 24 26 27 29 43 51 55 58 61 63 in box; HD 9/26/14 - List and # 1 in manila envelope.
46. 31-Mar-2016 ORDERED: consolidating cases 1 CA-CV 15-0047, 1 CA-CV 15-0107, 1 CA-CV 15-0127, 1 CA-CV 15-0249, 1 CA-CV 15-375, 1 CA-CV-15-0508, 1 CA-CV 15-0513, 1 CA-CV 15-0624, 1 CA-CV 15-0689, 1 CA-CV 15-0728, 1 CA-CV 15-0753, 1 CA-CV 16-0002 and 1 CA-CV 16-0042 for a limited purpose of considering this court's appellate jurisdiction in these cases. Case No 1 CA-CV 15-0047 is designated as primary number and above caption (or a shortened version listing at a minimum captions in Case No. 1 CA-CV 15-0047 and case number(s) in which filer is a party) shall be used on all future documents filed. FURTHER ORDERED: Directing any party to this consolidated appeal wishing to be heard on issue of whether order being appeal from in their specific case(s) must contain Rule 54 (c) language may file a memorandum, not to exceed 10 pages, on/before 4/20/16. No responses to memoranda will be permitted. Court will only accept a memorandum addressing this issue if filing party has paid filing fee in case number(s) in which filer is a party. FURTHER ORDERED: Staying all other aspects of this consolidated appeal that do not relate to Rule 54 (c) issue pending further order. Hon Kent E Cattani Judge - Author
47. 11-Apr-2016 FILED: Appellees' Reply in Support of Motion to Supplement the Record on Appeal; Certificate of Filing and Service Regarding Appellees' Reply in Support of Motion to Supplement the Record on Appeal (Appellees re 1 CA-CV 15-0107)
48. 12-Apr-2016 FILED: Appellee's Rule 54 (C) Memorandum; Proof of Service (Appellee Erlick - CV-15-0728)
49. 13-Apr-2016 FILED: Response to Court's Order re: Jurisdiction by Tri-Rentals, Inc. and Classic Party Rentals, Inc.; Certificate of Service (Appellant - CV-16-0042)
50. 19-Apr-2016 FILED: Consolidated Appellate Brief; Certificate of Service of Consolidated Appellate Brief (Appellant Yuma Funding - CV-15-0753)

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51. 19-Apr-2016 FILED: Joint Memorandum of Appellants and Appellees Regarding the Applicability of Arizona Rule of Civil Procedure 54(c); Certificate of Service (Appellants Turley, et al. v. Beus, et al. - CV-15-0107)
52. 20-Apr-2016 FILED: Appellants' Memorandum Regarding Rule 54 (c) Language; Certificate of Service (Appellants Angelo, et al. - CV-15-0689)
53. 20-Apr-2016 FILED: Petitioner/Appellant's Brief Regarding Rule 54(c); Certificate of Compliance; Certificate of Service (Appellant White - CV-16-0002)
54. 20-Apr-2016 FILED: Appellant MGA Home Healthcare's Supplemental Briefing on Requirement for Rule 54(C) Certification in Non-Final Appealable Judgments; Appellant MGA Home Healthcare - Certificate of Service (Appellant MGA - 1 CA-CV 15-0047)
55. 20-Apr-2016 FILED: Appellant Preferred Contractors Insurance Company's Supplemental Briefing on Requirement for Rule 54(C) Certification in Non-Final Appealable Judgments ; Appellant Preferred Contractors Insurance Company - Certificate of Service (Appellant Preferred Contractors Insurance Company -1 CA-CV 15-0375)
56. 20-Apr-2016 FILED: Memorandum (Appellants, Taylor/Overley, Pro Per - CV-15-0249)
57. 2-May-2016 FILED: Notice of Change of Firm Address; Certificate of Service (Appellant Tri-Rentals (CV-16-0042))
58. 3-May-2016 ORDERED: any response to motion to strike (surreply in CV-15-0728) must be filed on/before 5/13/16. Appellant may file a reply in accordance with ARCAP 6 (a) (2). FURTHER ORDERED: Court will rule on motion following expiration of time for a response and, if applicable, a reply. Melina Brill ProTem Judge - Author
59. 11-May-2016 FILED: Appellee's Response to Appellants Motion to Strike Appellees Surreply to Appellants Rebuttal to Appellees Answer Brief; Proof of Service (Appellee, Erick re 1 CA-CV 15-0728)
60. 26-May-2016 ORDERED: Consolidating case 1 CA-CV 15-0276 with previously consolidated case 1 CA-CV 15-0047 for sole purpose of considering Court's appellate jurisdiction. Case No. 1 CA-CV 15-0047 is designated primary number. FURTHER ORDERED: Removing case 1 CA-CV 16-0002 from this consolidated appeal. FURTHER ORDERED continuing stay of this consolidated appeal until further order. FURTHER ORDERED: Any party in 1 CA-CV 15-0276 that wishes to be heard on issue of order being appealed from is required to contain Rule 54(c) language may file a memorandum on/before 06/06/2016. Hon Kent E Cattani Judge - Author
61. 27-May-2016 FILED: Appellants Reply to Appellees Response to Strike Appellees Surreply to Appellants Rebuttal to Appellees Answer Brief (Appellant Pro Per, Davis re 1 CA-CV 15-0728)
62. 2-Jun-2016 FILED: Motion by Tri-Rentals, Inc. and Classic Party Rentals, Inc. to Remove Their Appeal from Consolidation and Lift Stay; Certificate of Service; Exhibit A (Appellants re 1 CA-CV 16-0042)
63. 6-Jun-2016 FILED: Plaintiff's Response in Support of Motion by Tri-Rentals, Inc. and Class Party Rentals, Inc. to Remove Thier Appeal from Consolidation and Lift Stay; Certificate of Service (Appellee re 1 CA-CV 16-0042)
64. 7-Jun-2016 ORDERED: Removing CV 16-0042 from consolidated appeal. Hon Kent E Cattani Judge - Author
65. 7-Jun-2016 ORDERED: Removing CV 15-0276 from consolidated appeal. Hon Kent E Cattani Judge - Author
66. 10-Jun-2016 FILED: Appellee's Motion to Strike; Proof of Service (Appellee, Erick re 1 CA-CV 15-0728)
67. 17-Jun-2016 FILED: Motion for Reconsideration Concerning Appellants Motion to Strike Appellees Surreply (Appellant Pro Per, Davis re 1 CA-CV 15-0728)
68. 22-Jun-2016 ORDERED: Consolidating case 1 CA-CV 16-0294 with case 1 CA-CV 15-0047 for sole purpose of considering this court's appellate jurisdiction. Case 1 CA-CV 15-0047 is designated the primary number. FURTHER ORDERED: Continuing stay of this consolidated appeal until further order. FURTHER ORDERED: Any party in case 1 CA-CV 16-0294 that wishes to be heard on issue regarding order containing Rule 54(c) language, memorandum due 07/05/2016. Hon Kent E Cattani Judge - Author
69. 27-Jun-2016 FILED: Motion for Appointment of Counsel (Appellant Pro Per)
70. 29-Jun-2016 FILED: Appellee's Response to Notice to the Court that Appellee Will Consider Appellants Request for Sanctions as Part of Appellants Motion for Reconsideration and Will not Respond Unless Requested by the Court; Proof of Service (Appellee)
71. 29-Jun-2016 FILED: Appellee's Reply to Appellant's Response to Appellee's Motion to Strike; Proof of Service (Appellee)
72. 29-Jun-2016 ORDERED: Motion for Appointment of Counsel (Appellant Pro Per) = DENIED. Melina Brill ProTem Judge - Author

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| 73. | 6-Jul-2016 | ORDERED: Denying Erlick's motion to strike Davis's reply. FURTHER ORDERED: Denying Davis's motion for reconsideration. FURTHER ORDERED: Denying Erlick's motion to strike Lavoie's rebuttal because that pleading was not accepted for filing. FURTHER ORDERED: Taking no action on Erlick's response to Lavoie's motion for permissive joinder and motion to intervene. Hon Maurice Portley - Author |
| 74. | 11-Jul-2016 | FILED: Courtesy Copy - Copy of my Medical Benefits for State of Calif Gov. Program (Debra Lavoie) |
| 75. | 28-Jul-2016 | OPINION (Appeal Reinstated) Hon Samuel A Thumma - Author; Hon Kent E Cattani Judge - Concur; Hon Randall M Howe - Concur |
| 76. | 28-Jul-2016 | FILED: Opinion Distribution List |
| 77. | 28-Jul-2016 | ORDERED: deconsolidating 1 CA-CV 15-0047 from the remaining appeals. FURTHER ORDERED: terminating stay and reinstating this appeal. FURTHER ORDERED: appeal shall be scheduled for consideration on the merits. Hon Kent E Cattani Judge - Author |
| 78. | 5-Oct-2016 | CLNDR: MONTHLY COURT CASE CALENDAR, Department B, 11-29-16, 11:00 am, COURTROOM 1. |
| 79. | 6-Oct-2016 | FILED: Notice of Oral Argument |
| 80. | 2-Nov-2016 | FILED: Receipt for Notice of Oral Argument, signed by Kevin R Myer on 11/02/2016 (Appellants) |
| 81. | 28-Nov-2016 | FILED: Receipt for Notice of Oral Argument, signed by Robert M Gregory on 10/14/2016 (Appellees) |
| 82. | 28-Nov-2016 | FILED: Notice of Change of Firm re: Counsel of Records for Plaintiffs/Appellees Billy Brumett and Angela Brumett; Certificate of Service (Appellees) |
| 83. | 29-Nov-2016 | FILED: Sign-in Sheet/Case is Under Advisement as of 11/29/2016 (Dept B) |
| 84. | 6-Dec-2016 | MEMORANDUM DECISION (Vacated, Remanded) Hon Margaret H Downie - Author; Hon Samuel A Thumma - Concur; Hon Mark R Moran - Concur |
| 85. | 6-Dec-2016 | FILED: Memorandum Decision Distribution List |
| 86. | 7-Dec-2016 | FILED: Statement of Costs; Certificate of Service (Appellant) |
| 87. | 4-Jan-2017 | ORDERED: awarding Defendants/Appellants their costs in the amount of \$1,089.10. Amy M Wood - Author |
| 88. | 12-Jan-2017 | FILED: Mandate, Record returned to superior court. |